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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,011	08/02/2001	Svetlana A. Dambinova	08805.105001	8646

7590

08/31/2004

CLARK G. SULLIVAN  
KING & SPALDING  
191 PEACHTREE STREET N.E 45th FLOOR  
ATLANTA, GA 30303

EXAMINER
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HUNNICUTT, RACHEL KAPUST

ART UNIT	PAPER NUMBER
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1647

DATE MAILED: 08/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/922,011

Applicant(s)

DAMBINOVA, SVETLANA A.

Examiner

Rachel K. Hunnicutt

Art Unit

1647

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 41,42 and 67-73.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_

  
JANET ANDRES  
PRIMARY EXAMINER<sup>KH</sup>

Continuation of 2. NOTE: The claims now require a step of evaluating from the level of NR2A and/or NR2B NMDA receptor whether the stroke is ischemic or hemorrhagic. The step of evaluating whether the stroke is ischemic or hemorrhagic is a new issue that has not previously been presented.

Continuation of 5. does NOT place the application in condition for allowance because: Applicant's arguments with respect to the rejection of claims 41 and 42 under 35 U.S.C. 103 as being obvious over Dambinova et al. in view of Senju et al. have been fully considered but have not been found to be persuasive. As stated in the previous office action, Dambinova et al. teach both direct and indirect methods of detecting NR2A NMDA receptors in stroke patients. On p. 153, column 2, Dambinova et al. teach that levels of NR2A autoantibodies were raised in patients about 2-3 hours before the onset of a stroke. Clearly, one of ordinary skill in the art would have expected NR2A levels to be raised and measurable within the same timeframe following the occurrence of the stroke. As stated in the previous office action, one of ordinary skill in the art would have expected that any method of measuring NR2A levels would be sufficient for diagnosing a stroke, and latex agglutination is simply another method for measuring NR2A levels known in the art.